

VICTORIA.



ANNO OCTAVO

EDWARDI SEPTIMI REGIS.



No. 2155.

An Act to amend the *Fences Act 1890*.

[16th November, 1908.]

**B**E it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Fences Act 1908*, and shall be read and construed as one with the *Fences Act 1890* (hereinafter called the Principal Act). Short title and construction. No. 1092.

(2) This Act and the Principal Act may be cited together as the *Fences Acts*. Citation.

2. In this Act the expression "vermin-proof fence" means a fence of one of the kinds following (that is to say):— Definition of vermin-proof fence.

(a) a fence of any of the kinds mentioned in section two hundred and ninety-one of the *Land Act 1901* ; No. 1749.

(b) a post

- (b) a post and rail or paling fence of substantial material firmly erected not less than three feet six inches in height having three wires tightly stretched or two wires and top rail in either case with posts or standards of iron or durable wood not more than twelve feet apart and having a galvanized wire netting not less than three feet six inches wide number seventeen gauge and not larger than a one and a half inch mesh firmly affixed thereto and sunken in the ground not less than six inches ;
- (c) a post and rail or paling or wire fence or portion or portions of a fence of any of the descriptions numbered (I.) (II.) or (III.) mentioned in section four of the Principal Act and to which is firmly affixed galvanized wire netting not less than three feet six inches wide and number seventeen gauge and not larger than a one and a half inch mesh sunken into the ground not less than six inches ; and
- (d) any fence proclaimed by Order of the Governor in Council under section two hundred and ninety-two of the *Land Act* 1901, or section seventy-one of the *Vermin Destruction Act* 1890, or any previous corresponding enactments to be a vermin-proof fence or rabbit-proof fence ; but no fence so proclaimed shall for the purposes of this Act be a vermin-proof fence beyond the limits of the part or portion of Victoria if any specified in such Order.

No. 1749 s. 292.  
No. 1153 s. 71.

Power to Governor  
in Council to  
proclaim vermin-  
proof fence.

3. The Governor in Council may by Order proclaim any fence described in such Order to be a vermin-proof fence within the meaning of this Act either throughout Victoria or within any portion thereof specified in such Order and may at any time revoke any such Order.

Liability respecting  
vermin-proof  
dividing fences.

4. (1) Notwithstanding anything contained in the Principal Act where any adjoining lands are not divided by a vermin-proof fence and the Chief Inspector for Suppression of Vermin after a personal inspection of such adjoining lands or on consideration of a recommendation or report by any Inspector under the *Vermin Destruction Act* 1890 certifies in writing that a vermin-proof fence is necessary then each of the occupiers of such adjoining lands shall unless such certificate is negatived as hereinafter provided be liable to contribute in equal proportions—

- (a) towards constructing a vermin-proof fence between such lands; or
- (b) towards making vermin-proof any fence previously constructed between such lands; or
- (c) towards maintaining and repairing any vermin-proof fence previously constructed between such lands.

Provided

Provided that any person who shall feel himself aggrieved by any such certificate of the Chief Inspector may within fourteen days appeal against such certificate to the Minister of Lands who upon consideration of such appeal may negative or affirm such certificate.

(2) This section does not apply to Crown lands or any land vested in the Board of Land and Works or the Victorian Railways Commissioners or in any "Authority" as defined in section three of the *Water Act 1905*. No. 2016.

5. Where a person desires to compel any other person to contribute to the construction of a dividing fence and desires that such fence shall be a vermin-proof fence he shall in the notice to be served on such person pursuant to section seven of the Principal Act distinctly specify the kind of vermin-proof fence proposed to be constructed. Notice to fence to specify proposed kind of vermin-proof fence.

6. Notwithstanding anything contained in the Principal Act where any such notice distinctly specifies the kind of vermin-proof fence proposed to be constructed the power of any court or justices or of any arbitrator to prescribe or award the kind of fence to be constructed shall be limited to prescribing or awarding the particular kind of vermin-proof fence which shall be constructed. Only a vermin-proof fence is to be erected when specified in notice

7. For the purposes of this Act the making vermin proof of any dividing fence constructed between any lands shall be deemed to be the construction of a vermin-proof fence, and all the provisions of this and the Principal Act enabling any person to compel any other person to contribute to the construction of a vermin-proof fence shall equally apply to compelling persons to contribute to the making vermin proof of any fence so constructed, and such provisions with such substitutions as may be necessary for such purpose shall be read and construed accordingly. Making a fence vermin proof to be deemed constructing a vermin-proof fence.

8. Notwithstanding anything in this Act, where any person has (whether before or after the commencement of this Act) constructed on the boundary of his land a fence of any of the kinds specified in paragraph (b) or (c) of section two of this Act but having wire netting the mesh of which is larger than one and a half inch and not larger than one and five eighths inch the occupier of any adjoining land shall not be entitled to compel any such person to contribute towards constructing a vermin-proof fence of another kind in place of such fence or on the ground merely of the size of the mesh to contribute towards making such fence vermin proof. No contribution in case of certain kinds of fence.

9. (1) Notwithstanding anything in the Fences Acts where any person constructs on the boundary of his land a vermin-proof fence and the land immediately adjoining is unalienated Crown land the occupier Recovery of one-half of the value of vermin-proof dividing fence erected before adjoining land alienated from the Crown.

occupier of the first-mentioned land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of such adjoining land one-half of the then actual value of the vermin-proof fence forming the dividing line or fence between such adjoining lands.

(2) The value of such fence shall be ascertained as soon as practicable after the adjoining land has become so occupied, and in default of agreement between the parties such value may on the complaint of either of them be determined by any Court of Petty Sessions.

(3) Any sum recoverable under this section may be recovered in a Court of Petty Sessions.

10. The provisions of Part II. of the Principal Act shall apply to the maintenance and repairs of fences constructed or made vermin proof under the provisions of this Act.

11. (1) If any person served with a notice requiring him to contribute towards the construction of a vermin-proof fence or the making vermin proof of any fence previously constructed between any lands proves to the satisfaction of a Court of Petty Sessions consisting of a police magistrate and one or more justices upon the hearing of a complaint under section eight of the Principal Act that he is unable to contribute his proportion of the cost of such construction or of the work of making vermin proof any fence already constructed, such justices may make an order that the person giving such notice shall be at liberty to construct the whole of such fence or do the whole of such work.

(2) Upon such construction or work being completed the proportion of such cost for which such first-mentioned person is liable shall become and until paid be and remain a charge upon such land, and the owner of such land until he pays the amount of such proportion shall pay annually to the person so constructing such fence or doing such work interest upon such amount at the rate of Six pounds per centum per annum.

(3) If default is made in respect to any such annual payment of interest such payment may be enforced at any time by the person entitled to receive such interest in a summary way before a Court of Petty Sessions or by action in any court of competent jurisdiction.

(4) Every mortgagee or lienee of or over any land shall be at liberty when any sum has pursuant to this Act become a charge upon such land to pay the amount of such charge, and such payment when so made shall be deemed a part of the principal sum secured by such mortgage or lien respectively and be subject to the provisions powers and trusts thereof.

12. When any order is made by a Court of Petty Sessions under the last preceding section the amount which any person shall be liable to contribute as his proportion of the cost of constructing a vermin-proof fence or of making vermin proof any fence previously constructed may

Maintenance of  
vermin-proof  
fences.  
No. 1092 ss. 16 and  
17.

Proportion of cost  
of vermin-proof  
fence a charge on  
land until paid.

Determination of  
proportion of cost.

may be determined by such Court at the time of making such order, or if not then determined it may on the complaint of either party be determined by any Court of Petty Sessions constituted as aforesaid at any time subsequent to the construction of such fence or the doing of such work.

**13.** Any person who wilfully destroys or breaks down or injures or removes any vermin-proof fence belonging to another person or any portion thereof, or cuts detaches or removes any netting forming part thereof shall in addition to paying the amount of the injury done be liable on conviction for a first offence to a penalty of not less than Five pounds or more than Fifty pounds, and for a second or subsequent offence to be imprisoned for any period not less than three months or more than twelve months. Penalty.

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